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March 31, 2011

Ex Parte

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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Implementation of Section 224 of the Act; WC Docket No. 07-245; United States Telecom Association Petition for Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures (RM-11293)

Dear Ms. Dortch:

On March 31, 2011, Katharine Saunders and the undersigned met with Austin Schlick, General Counsel, and Diane Griffin Holland of the FCC's Office of General Counsel and Marvin Sacks of the Wireline Competition Bureau to discuss the above-referenced proceeding.

Specifically, we explained, consistent with Verizon's Comments and Reply Comments filed in this proceeding,¹ that the Commission "shall" provide "just and reasonable" rates for all "pole attachments," under section 224, including all broadband-capable attachments by ILECs and other covered providers. We noted that currently, competing broadband providers pay vastly different rates for the same types of attachments and service offerings. In particular, we explained that the pole attachment rates currently paid by Verizon (as an ILEC) are significantly higher than the rates paid by Verizon's competitors for the same types of pole attachments, which gives some broadband providers an unfair competitive advantage over Verizon. Further, existing joint agreements Verizon has with electric utilities do not provide benefits that would level the playing field in light of this rate disparity.

We also explained that many of these existing joint agreements are decades old, and further noted that many agreements contain evergreen clauses and provisions which permit utilities to regularly raise rates.² These escalation provisions have contributed to increasing the

¹ See Verizon Comments, WC Docket 07-245, GN Docket 09-51, at 5-10 (Aug. 16, 2010); and Verizon Reply Comments, WC Docket 07-245, GN Docket 09-51, at 4-8 (Oct. 4, 2010).

² See Reply Declaration of J. Slavin and S. Frisbie, attached to Verizon Reply Comments, at ¶ 20 ("In our experience, the electric utility charges specified in joint ownership and joint use agreements are frequently updated to current levels. In some cases, these agreements themselves contain formulas and methodologies for updating costs. In other cases, the electric utilities

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rate disparity between ILECs and other attachers, as the utilities exercise their increased negotiating leverage.³ Commenters have noted that even though there has been an increasing number of providers that want to attach to poles in recent years, that since the 1996 Act some utilities have made demands to ILECs “for substantial rate increases far out of proportion to other cost indicia,” including some demands for “rate increases of 100% to 500%” with little weight given to the comparative costs of the pole.⁴

Thus, to meet its obligations under section 224, we urged that the Commission adopt a uniform rate formula for pole attachments that could serve as a benchmark for further negotiations. We further urged the Commission not to take any action that would actually or effectively exempt existing joint agreements from remediation under Section 224, and noted USTelecom’s recent ex parte further discussing these issues.⁵

Please let me know if you have any questions.

Sincerely,



cc: Austin Schlick
Diane Griffin Holland
Marvin Sacks

unilaterally update their charges to current levels.”); Comments of CenturyLink, WC Docket 07-245, GN Docket 09-51, at 17 (Aug. 16, 2010) (urging the Commission to “address evergreen/everblack provisions”); *see also* Letter from G. Reynolds, USTelecom to M. Dortch, FCC, WC Docket No 07-245, GN Docket No. 09-51, at 5-6 (Mar. 31, 2011) (collecting information regarding current, unreasonably high rates paid by ILECs); Reply Comments of AT&T, RM 11293, at 5.

³ Letter from Michael D. Saperstein, Jr., Frontier Communications, to Marlene H. Dortch, FCC, WC Docket No. 07-245, GN Docket No. 09-51 (Mar. 15, 2011) (stating that “utilities have gained significant leverage in joint use agreements that they have used to dramatically increase the pole attachment rates for ILECs”); Letter from A. Berkowitz, Verizon, to M. Dortch, FCC, WC Docket No 07-245, GN Docket No. 09-51 (Dec. 2, 2010) (“ILECs lack the leverage to negotiate for lower rates under existing agreements with electric utilities”); Reply Comments of AT&T, RM 11293, at 5 (Dec. 19, 2005)(“electric companies not only have consistently refused to renegotiate agreements predicated on different allotments but have sought to impose substantial rate increases and other fees.”).

⁴ *See* Reply Comments of The United States Telecom Association, RM11293, at 11 (Dec. 19, 2005); Petition of The United States Telecom Association for a Rulemaking to Amend Pole Attachment Rate Regulation and Complaint Procedures, RM11293, at 11 (Oct. 11, 2005).

⁵ Letter from G. Reynolds, USTelecom to M. Dortch, FCC, WC Docket No 07-245, GN Docket No. 09-51 (Mar. 31, 2011).